

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20369
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On July 11, 2007, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), reducing a claim for refund for the taxable year 2006 in the total amount of \$2,543.

On July 17, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer stated he refused to allow the State of Idaho to be the plaintiff, judge, and jury in a hearing or to submit documents to prove his case. However, he did provide additional information that explained his position. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 2006 Idaho individual income tax return. His return reported no income but claimed a refund in excess of \$3,000. Attached to the taxpayer's return was a federal form 4852 claiming that he received an incorrect W-2 Wage and Tax Statement from his employer, [Redacted]. The Tax Commission reviewed the W-2 that [Redacted] provided to the Tax Commission and found that the taxpayer was claiming that [Redacted] incorrectly reported that he received wages from [Redacted]. However, the taxpayer did agree that [Redacted] did withhold from his wages for state income tax.

The Revenue Operations Division (Division) of the Tax Commission corrected the taxpayer's return to report the wages the taxpayer received from [Redacted] and sent him a tax computation change letter. The taxpayer replied to the Division's letter stating that he was not an employee as defined in the Internal Revenue Code and therefore he earned no wages that were

taxable by the state of Idaho. The Division referred the matter to the Tax Discovery Bureau which reviewed the case, agreed with the Division's correction, and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Notice stating it was a clear violation of the Constitution of the United States and numerous federal laws, as well as the laws of the state of Idaho. He stated neither the Tax Commission nor its representatives have any legal power to make a determination of the amount of tax due by a citizen of the United States. The taxpayer stated he appropriately filed federal form 4852 which strikes out any evidence provided by any W-2 in the possession of the state of Idaho as invalid, incorrect, and faulty. The taxpayer demanded the Tax Commission refund his property (withholdings) it was holding.

The Bureau recognized the taxpayer's statements as those similar to various tax-protestor movements, so the matter was referred for administrative review. The Tax Commission reviewed the case and sent the taxpayer a letter giving him the opportunity to present his position through one of two methods adopted by the Tax Commission. The taxpayer responded that he was not going to allow the state of Idaho to be the plaintiff, judge, and jury. He stated if the Tax Commission wishes to wrongfully keep his property, it bears the burden of proof that he had income. The taxpayer stated the Internal Revenue Code simply states that income is wages paid by an employer. He referred back to the definitions he cited from the Internal Revenue Code in his letter to the Division and again asserted that he was not an employee, he had no wages, and therefore he had no income.

In other correspondence the taxpayer stated he did not work for the state of Idaho, the Federal Government, or any government authority or organization. He stated he does not fall under the jurisdiction of the Idaho State Tax Commission because he is not legally defined as a

taxpayer. The taxpayer stated that Idaho Code section 63-3002 only stated the intention of the code not the legal authority of the code; therefore, it is inadmissible as evidence contrary to his assertions. The taxpayer stated he was simply exercising his right to earn income, which is not a privilege and consequently the tax cannot apply to him. Therefore, upon receiving the notice that incorrect information was filed on his behalf stating information contrary to the facts and receiving the appropriate forms showing the error, the Tax Commission should immediately return all monies collected from him.

The taxpayer's argument centers around two basic themes: 1) he is not an employee as defined in the Internal Revenue Code (IRC), and 2) he does not belong to the class of "taxpayer" so no tax is applicable to him. Both of these arguments have been examined by the Courts and have been rejected as being without merit and frivolous.

The taxpayer's argument that he is not an employee is based on a misinterpretation of IRC section 3401, which imposes responsibilities to withhold tax from wages. That section establishes the general rule that wages include all remuneration for services performed by an employee for his employer. Section 3401(c) defines employee and states that the term "includes an officer, employee or elected official of the United States, a State, or any political subdivision thereof" The taxpayer believes that this section specifically identifies the only employees required to pay a tax, and since he is not employed by the federal government, the State, or any other governmental body, he is not an employee subject to the income tax. However, the purpose of this subsection is not to specify every possible employee, its purpose is to include those employed by the government.

IRC section 7701(c) states that the use of the word "includes" when used in a definition in the IRC, "shall not be deemed to exclude other things otherwise within the meaning of the

term defined." Thus, the word "includes" as used in the definition of employee is a term of enlargement, not of limitation. Clearly federal employees and officials are part of the definition of employee, but it also pertains to all other employees, public and private. See United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985); Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986); Peth v. Breitzmann, 611 F. Supp. 50, 53 (E.D. Wis. 1985); and Pabon v. C.I.R., T.C. Memo. 1994-476, 68 T.C.M. (CCH) 813, 816 (1994). The taxpayer argued the use of the word includes is "amenable only a narrowly limited expansion – permitting the inclusion of other things of the same legal character as those already listed, but nothing else." Even in the taxpayer's limited expansion, an employee still encompasses private sector employees, since the legal character of an employee is a person working for salary or wages; one who works for an employer.

The taxpayer stated he was not part of the taxpayer class. This notion comes partially from the definition of an employee, as covered above, and also from the taxpayer's idea that he is a sovereign citizen. Nevertheless, he is still required to file returns and pay a tax.

The IRC clearly defines "person" and sets forth which persons are subject to federal taxes. Section 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax and section 7701(a)(1) defines person to include an individual, trust, estate, partnership, or corporation. The argument that an individual is not a taxpayer has been uniformly rejected time and time again. See United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), cert. denied, 480 U.S. 907 (1987); United States v. Rhodes, 921 F. Supp. 261, 264 (M.D. Pa. 1996); Biermann v. C.I.R., 769 F.2d 707, 708 (11th Cir.), reh'g denied, 775 F.2d 304 (11th Cir. 1985); Smith v. Commissioner, T.C. Memo. 2000-290, 80 T.C.M. (CCH) 377, 378- 89 (2000); and United States v. Studley, 783 F.2d 934, 937 n.3 (9th Cir. 1986).

For Idaho tax purposes, Idaho Code section 63-3009 defines the term taxpayer as any person subject to a tax imposed by this act or required by the provisions of this act to file an income tax return, report income, or pay a tax. A person is defined in Idaho Code 63-3005 to include an individual. Individual is defined in Idaho Code section 63-3008 as a natural person.

Idaho Code section 63-3002 states it is the intent of the Idaho legislature, by the adoption of this act, to impose a tax on the residents of the state of Idaho. The authority to tax is provided in Article VII, Section 2 of the Constitution of the State of Idaho. The authority of the Idaho State Tax Commission is provided in Article VII, Section 12 of the Constitution of the State of Idaho.

The taxpayer lives within the borders of Idaho and is a resident of Idaho. He has not contested this fact. Therefore, if he had income in excess of the filing threshold provided in Idaho Code section 63-3030, he was required to file an Idaho individual income tax return. The taxpayer stated he received wages from his private-sector employer, [Redacted]. Those wages were in excess of the filing requirement of Idaho Code section 63-3030. Therefore, the taxpayer was required to file an income tax return and report his income from all sources to Idaho. (Idaho Code section 63-3002)

The taxpayer's arguments have not persuaded the Tax Commission that the change the Division made to his 2006 Idaho income tax return was not correct. The taxpayer had income, and he was required to report that income to Idaho. Therefore, the Tax Commission finds the adjustment appropriate and hereby upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated July 11, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The taxpayer has received the corrected refund so no further Order is necessary.

An explanation of taxpayer's right to appeal this decision is enclosed.

DATED this ____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2008, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.